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Kieran Buckley

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re	)	Case No. 13-30827
DAVID WILLIAM BARTENWERFER and	)	Chapter 7
KATE MARIE BARTENWERFER	)	Adversary Proceeding No. 13-03185
Debtors.	)	
_____	)	<b>OPPOSITION TO MOTION TO</b>
KIERAN BUCKLEY	)	<b>DISMISS COMPLAINT TO</b>
Plaintiff,	)	<b>DETERMINE DISCHARGEABILITY OF</b>
vs.	)	<b>DEBT</b>
DAVID WILLIAM BARTENWERFER AND	)	<b>11 U.S.C. Section 523(a)(2)</b>
KATE MARIE BARTENWERFER	)	
Defendants.	)	

Plaintiff Kieran Buckley ("Buckley") opposes Defendants' Motion to Dismiss (the "Motion") Buckley's Complaint to Determine Dischargeability of Debt (the "Complaint") and urges the Court to deny the motion.

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1 **INTRODUCTION:**

2 Defendants assert that while describing the “general relationship” among the parties, the  
3 Complaint fails to identify the statements Defendants made or the “timeframes” in which they acted.  
4 This assertion is particularly ironic given the fact that Defendants’ bankruptcy and this adversary case  
5 followed a lengthy and contentious state court jury trial, which Defendants lost. Complaint ¶ 4. The  
6 Complaint essentially includes the same facts alleged and proved in the state court case. Therefore, for  
7 Defendants to plead ignorance of what are alleged to have done, or inability to discern the conduct upon  
8 which Buckley bases his claim is disingenuous. As discussed below, the Complaint provides plenty of  
9 allegations to establish Buckley’s claim for relief, so the Motion should be denied.

10 **ARGUMENT:**

11 Defendants argue that they cannot determine what statements Buckley relied upon prior to  
12 purchasing the real property in question, and assert that the Complaint is too general in its descriptions.  
13 Defendants further assert that they cannot be expected to understand what Buckley is referencing and  
14 what representations or statements they made that Buckley asserts form the basis for their liability.

15 The Complaint, however, provides numerous examples of what Defendants represented - and  
16 what they did not disclose, both of which set the stage for their liability. For example,  
17 Paragraph 7 of the complaint alleges in part:

18 Defendants... concealed information from Plaintiff, including but not limited to  
19 concealing that the work performed at the Property was not constructed in compliance  
20 with building codes, failed to disclose multiple leaks at the Property, failed to disclose  
21 the existence of mold and inadequate ventilation, failed to disclose to Plaintiff that work  
22 at the Property had not been performed in a workmanlike manner, failed to disclose that  
23 the work had been performed by unlicensed contractors or by Defendants themselves, and  
24 failed to disclose that the construction did not comply with building standards.  
25 Defendants represented that the work at the Property had been done by licensed  
26 contractors with permits and that only the final inspection needed to be completed.  
27 Defendants described the construction work at the Property as being “meticulous.”  
28 Defendants did not disclose that all permits were still “open,” and that there had been no  
electrical or plumbing “final” sign off despite the fact that all walls were closed at the time  
of sale.

25 Paragraph 8 then sets forth (not quoted here) a litany of defects Buckley discovered after he  
26 acquired the real property, which conditions were at odds with Defendants’ representations and omissions  
27 noted in paragraph 7.

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1 Similarly, paragraph 9 alleges as follows:

2 Prior to Plaintiff's purchase of the Property, however, Defendants continually reassured  
3 and advised him that all work performed at the Property and all material installations had  
4 been fully inspected, signed off and approved by the City and County of San Francisco,  
and that Defendants had provided Plaintiff with a full and complete set of plans submitted  
to the City.

5 The Complaint then continues with the necessary allegations regarding Defendants' knowledge of  
6 the falsity of the representations or the fact that the failure to disclose was material to Buckley (§10); that  
7 the representations were made to induce action by Buckley, namely, complete his purchase of the real  
8 property (§11); Buckley's reliance on the statements or nondisclosures (§12); and resulting damages (§  
9 13).<sup>1</sup>

10 **CONCLUSION:**

11 Based on the above and on the Complaint, Kieran Buckley requests that the Court deny the  
12 Motion to Dismiss and require Defendants to file an answer within 14 days.

13 Dated: September 12, 2013

LAW OFFICES OF STEPHEN D. FINESTONE

15 /s/ Stephen D. Finestone

16 Stephen D. Finestone  
Attorney for Plaintiff

17 Opp to Motion to Dismiss.wpd

25 \_\_\_\_\_  
26 <sup>1</sup> The standards for a cause of action under Section 523(a)(2) are well-settled in the Ninth Circuit:  
27 The five elements, each of which the creditor must demonstrate by a preponderance of the evidence are:  
28 (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor; (2) knowledge of the  
falsity or deceptiveness of his statement or conduct; (3) an intent to deceive; (4) justifiable reliance by  
the creditor on the debtor's statement or conduct; and (5) damage to the creditor proximately caused by  
its reliance on the debtor's statement or conduct. [citations] *Turtle Rock Meadows Homowners Ass'n v.*  
*Slyman (In re Slyman)*, 234 F.3d 1081, 1085 (9<sup>th</sup> Cir. 2000)